IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

CRP.No. 1009 of 2005()

AGAINST THE ORDER DATED 07/06/2005 IN IA. 1743 /2005 IN AS.109/2004 of IV ADDL. DISTRICT COURT, ERNAKULAM

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REVN. PETITIONER: RESPONDENTS/DEFENDANTS

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1. GIJO THOMAS, S/O.K.V.THOMAS,
KARAKAPPILLIL, TRIKKAKARA, VAZHAKKALA VILLAGE,
KANAYANNUR TALUK.

2. PIUS ABRAHAM, S/O. PAPPY ABRAHAM,
VAINKULAM HOUSE, NEDUMUDI VILLGE,
KUTTANAD TALUK, ALAPPUZHA.

BY ADV. SRI.P.KESAVAN NAIR
SRI.K.G.CLEETUS

RESPONDENTS: APPELLANT/1ST PLAINTIFF

SAVITHRY, D/O.AYYAPPAN SANKARAN AMPADATH
AND W/O.T.K.KRISHNAN, THYALPADICKEL HOUSE,
PANAMBUKAD, MULAVUKAD VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.A.X.VARGHESE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.2914/05 IN C.R.P.1009/05

DISMISSED

15.6.2007 SD/- M.N.KRISHNAN, JUDGE

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No.1009 OF 2005 D

Dated this the 15th June, 2007.

O R D E R

This revision petition is preferred against the order of the IV Additional District Judge, Ernakulam in I.A.1743/05 in A.S.109/04. A.S.109/04 was disposed of by setting aside the judgment passed by the II Additional Munsiff Court in O.S.2001/97 and remanded back to the lower court on condition that the plaintiff has to deposit an amount of Rs.1,000/- as cost to the first defendant on or before 21.5.2005, that he shall deposit an amount of Rs.3,000/- as commission bata and Rs.500/- as surveyor bata. In case of non-compliance suit is to be dismissed. Thus the total amount to be deposited by the party is Rs.4,500/- and the said amount has been deposited on 20.6.2005. The revision petitioner challenges the order in I.A.1743/05 which was an application filed by the plaintiff-appellant to extend the time for depositing the amount. As per order dated 7.6.2005 the time was enlarged up to 21.6.2005. So if this order is sustainable then there is nothing to interfere. Learned counsel for the revision petitioner would contend that the provisions of the Civil Procedure Code does not empower the court to extend the time in an application which is filed beyond the

period fixed for payment of the amount. Learned counsel had relied upon the decision of this Court reported in **Christeena v. Kolappan** (1977 KLT 215). In that decision a learned Judge of this Court held that an application for extension of time filed after the expiry of the period is not maintainable. On the other hand counsel for the other side had drawn my attention to the decision of this Court reported in **Janakiamma v. Krishnan** (1978 KLT 463) and **Abdulkhadar v. Abdul Rahiman** {1988(1) KLT 680) and also decision of the Madras High Court reported in **Nainar Mohammed v. Khajur Mohideen** {1990(2) KLT page 9 S.N.13). In the above mentioned cases this Court as well as the High Court of Madras considered the precise question whether the Court has competence under Section 148 of the Civil Procedure Code to enlarge time after the time fixed in the original order. It is worthwhile to quote 1988(1) KLT 680:

> "By insisting that the application should be filed before the expiry of the time, a new restriction is invested without being warranted by the provisions. The power under Section 148 of the Code can be exercised or even invoked after the expiry of the time originally granted, provided there are goods reasons for extending time."

2. In the earlier decision of this Court in 1978 KLT 463 as well as in the decision of the Madras High Court in 1990 (2) KLT page 9 S.N.13 the same principle has been

applied. So by virtue of the subsequent decision of this Court after the 1977 KLT 215 decision it is fairly well settled that the court has power to grant extension of time in an application which was filed after the expiry of the time fixed in the petition.

3. Now the only question that germanes for consideration is whether there are grounds to use the discretion in favour of the plaintiff-appellant in this case. Under Section 148 the court is empowered in its discretion to enlarge the period.

4. Now, learned counsel for the respondent would submit before me that the plaintiff is a widow and on account of reasons beyond her control she was not able to raise the fund in time and deposit it before the court. There is no undue delay in this case though the time fixed was 23.5.2005 the amount has been paid within a period of one month i.e before 20.6.2005. She had also moved the court, though late by two days for extension of time. So, all these factors indicate her interest in prosecuting the case properly and the delay in deposit by few days cannot be made as a ground for throwing out her case when her case has been remanded back by the appellate court for fresh disposal in accordance with law.

5. I feel this is a fit case where the trial court

has exercised its discretion properly and permitted the application for extension of time. Therefore, the order challenged does not suffer from any illegality, irregularity and infirmity. C.R.P stands dismissed. The suit is restored to file and the trial court is directed to give notice to both parties or at least through counsel regarding the date of posting the case.

M.N.KRISHNAN
Judge

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